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5 *Providence Health Plan*

The Honorable Marco A. Hernandez

6  
7  
8 UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF OREGON  
9 PORTLAND DIVISION

10 CHRIS W. and JENNIFER W.,

11 Plaintiffs,

12 v.

13 PROVIDENCE HEALTH PLAN; STATE OF  
OREGON PUBLIC EMPLOYEES BENEFIT BOARD  
14 PLAN; THE INTEL CORPORATION HEALTH AND  
WELFARE BENEFIT PLAN; BLUE CROSS OF  
15 CALIFORNIA dba ANTHEM BLUE CROSS; and  
DOES 1 through 10,

16 Defendants.  
17

CASE NO. 3:22-cv-00428-HZ

DEFENDANT PROVIDENCE  
HEALTH PLAN'S ANSWER TO  
PLAINTIFFS' December 2, 2022,  
"THIRD AMENDED COMPLAINT"

18  
19 Defendant PROVIDENCE HEALTH PLAN ("Defendant" or "Providence"), by and  
20 through the undersigned attorneys of record, hereby answer what Plaintiffs have styled as their  
21 "Third Amended Complaint" (Dkt. #95), filed on December 2, 2022, which in actuality is the  
22 Fourth Amended Complaint. This document will be referenced below as the Third Amended  
23 Complaint, but relates to the above described document. In answer thereof, Defendant states as  
24 follows:  
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**PRELIMINARY ALLEGATIONS**

**JURISDICTION**

1. Answering Paragraph 1 of the Third Amended Complaint, Defendant denies the allegations thereof, as they pertain to Defendant.

2. Answering Paragraph 2 of the Third Amended Complaint, Defendant is without information to form a belief as to the truth of the allegations relating to the Blue Cross and Intel Defendants, which are therefore denied. Defendant agrees that Oregon law governs Plaintiffs' claims against Providence. Except as stated above, Defendant denies the remaining allegations of this paragraph.

3. Answering Paragraph 3 of the Third Amended Complaint, Defendant admits only that jurisdiction in the District of Oregon Portland Division is proper. The remaining allegations contained in Paragraph 3 are legal conclusions pertaining to other defendants to which no response is required. To the extent a response is required, Defendant denies the remaining allegations.

4. Answering Paragraph 4 of the Third Amended Complaint, Defendant asserts that the allegations contained therein are legal conclusions to which no response is required.

**PARTIES**

5. Answering Paragraph 5 of the Third Amended Complaint, on information and belief, Defendant admits the allegations thereof.

6. Answering Paragraph 6 of the Third Amended Complaint, on information and belief, Defendant admits the allegations thereof.

7. Answering Paragraph 7 of the Third Amended Complaint, Defendant denies based on lack of knowledge and information.

1 8. Answering Paragraph 8 of the Third Amended Complaint, Defendant admits that Chris  
2 W. participated in the PEBB self-funded Plan sponsored by the State of Oregon.

3 9. Answering Paragraph 9 of the Third Amended Complaint, Defendant avers that the  
4 “PEBB Plan” is a self-funded health plan sponsored by the State of Oregon and that Providence  
5 is the claims administrator for medical claims. Except as stated above, Defendant denies all  
6 remaining allegations of this paragraph.

7 10. Answering Paragraph 10 of the Third Amended Complaint, Defendant admits that it is a  
8 nonprofit corporation domesticated in Oregon with its principal place of business in Beaverton,  
9 Oregon.

10 11. Answering Paragraph 11 of the Third Amended Complaint, Defendant denies based on  
11 lack of knowledge and information.

12 12. Answering Paragraph 12 of the Third Amended Complaint, Defendant denies based on  
13 lack of knowledge and information.

14 13. Answering Paragraph 13 of the Third Amended Complaint, Defendant denies based on  
15 lack of knowledge and information.

16 14. Answering Paragraph 14 of the Third Amended Complaint, Defendant denies that the  
17 self-funded health plan sponsored by the State of Oregon (e.g. the “PEBB Plan”) was an  
18 “insurance plan” and denies the remaining allegations, which are legal conclusions.

19 15. Answering Paragraph 15 of the Third Amended Complaint, Defendant denies based on  
20 lack of knowledge and information.

## 21 **FACTS**

22 16. Answering Paragraph 16 of the Third Amended Complaint, Defendant are without  
23 information sufficient to form a belief as to the truth of the allegations relating to “the Anthem  
24

1 Plan,” which are therefore denied. As to the “PEBB Plan,” Defendant denies that the PEBB  
 2 Plan “guarantee[s], warrant[s] and promise[s] coverage” for any Medically Necessary service,  
 3 according those allegations are denied and all remaining allegations of this paragraph are  
 4 denied.

5  
 6 17. Answering Paragraph 17 of the Third Amended Complaint, on information and belief,  
 7 Defendant admits that P.K.W. is Plaintiffs Chris W.’s and Jennifer W.’s daughter and a was at  
 8 one time a dependent under the PEBB Plan. Defendant is without knowledge and information  
 9 to either admit or deny that P.K.W. is a beneficiary of the Anthem Plan, and therefore denies  
 10 the same.

11  
 12 18. Answering Paragraph 18 of the Third Amended Complaint, Defendant admits that the  
 13 PEBB Plan was in effect at all relevant times. Defendant is without knowledge and information  
 14 to either admit or deny that the Anthem Plan was in effect at all relevant times, and therefore  
 15 denies the same.

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 17 19. Answering Paragraph 19 of the Third Amended Complaint, the allegations contained  
 18 therein are legal conclusions. They are denied.

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 20 20. Answering Paragraph 20 of the Third Amended Complaint, Defendant denies based on  
 21 lack of knowledge and information.

22  
 23 21. Answering Paragraph 21 of the Third Amended Complaint, Defendant avers that claims  
 24 for mental health services under the PEBB Plan were processed by Optum and Providence.  
 25 Except as expressly stated above, Defendant denies the remaining allegations of this paragraph.

26  
 27 22. Answering Paragraph 22 of the Third Amended Complaint, Defendant denies based on  
 lack of knowledge and information.

1 23. Answering Paragraph 23 of the Third Amended Complaint, Defendant denies based on  
2 lack of knowledge and information.

3 24. Answering Paragraph 24 of the Third Amended Complaint, Defendant denies the legal  
4 conclusions and assertions regarding the administrative service agreement between PEBB and  
5 Providence, which speaks for itself, and denies all allegations in this Paragraph to the extent  
6 they are incomplete or inconsistent with this agreement.  
7

8 25. Answering Paragraph 25 of the Third Amended Complaint, Defendant denies the legal  
9 conclusions and assertions regarding the administrative service agreement, which speaks for  
10 itself, and denies all allegations in this Paragraph to the extent they are incomplete or  
11 inconsistent with this agreement.  
12

13 26. Answering Paragraph 26 of the Third Amended Complaint, Defendant denies the legal  
14 conclusions and allegations contained herein.

15 27. Answering Paragraph 27 of the Third Amended Complaint, Defendant lacks  
16 information sufficient to form a belief as to the truth of the allegations as to why Chris W.  
17 accepted coverage under the PEBB Plan, or any of the other allegations contained herein,  
18 accordingly the allegations of this paragraph are denied.  
19

20 28. Answering Paragraph 28 of the Third Amended Complaint, Defendant denies the legal  
21 assertion that Defendant had the “power, authority, and duty” to act contrary to the PEBB Plan  
22 and all allegations contained herein are therefore denied.

23 29. Answering Paragraph 29 of the Third Amended Complaint, Defendant admits that at all  
24 relevant times Defendant served as the third party administrator for medical claims relating to  
25 the PEBB Plan. Except as expressly admitted above, the remaining allegations of this  
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1 paragraph are legal arguments and conclusions to which no response is required. To the extent  
2 a response is required, the allegations are denied.

3 30. Answering Paragraph 30 of the Third Amended Complaint, Defendant denies the  
4 allegations contained therein.

5 31. Answering Paragraph 31 of the Third Amended Complaint, Defendant avers that the  
6 PEBB Plan expressly references “written criteria regarding medically indicated Services that  
7 are maintained by the Providence Health Plan” accordingly, to the extent Plaintiffs’ reference  
8 to “Providence Health Plan Guidelines” is meant to refer to the “written criteria” referenced in  
9 the Plan, this allegation is denied.  
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11 32. Answering Paragraph 32 of the Third Amended Complaint, Defendant denies based on  
12 lack of knowledge and information.

13 33. Answering Paragraph 33 of the Third Amended Complaint, Defendant denies based on  
14 lack of knowledge and information.

15 34. Answering Paragraph 34 of the Third Amended Complaint, Defendant asserts that the  
16 PEBB Plan and applicable written criteria speak for themselves, and Defendant denies all  
17 allegations in this Paragraph to the extent they are incomplete or inconsistent with these  
18 documents. As to the allegations relating to the Anthem Plan, Defendant denies based on lack  
19 of knowledge and information.  
20

21 35. Answering Paragraph 35 of the Third Amended Complaint, Defendant asserts that the  
22 PEBB Plan and applicable written criteria speak for themselves, and Defendant denies all  
23 allegations in this Paragraph to the extent they are incomplete or inconsistent with these  
24 documents.  
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1 36. Answering Paragraph 36 of the Third Amended Complaint, Defendant denies based on  
2 lack of knowledge and information.

3 37. Answering Paragraph 37 of the Third Amended Complaint, Defendant asserts that the  
4 allegations contained therein are legal conclusions to which no response is required. To the  
5 extent a response is required, Defendant denies the allegations contained therein.  
6

7 38. Answering Paragraph 38 of the Third Amended Complaint, on information and belief,  
8 Defendant admits P.K.W. at one time was diagnosed with the listed mental health conditions.  
9 Except as admitted, all remaining allegations are denied.

10 39. Answering Paragraph 39 of the Third Amended Complaint, Defendant avers that the  
11 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
12 Defendant denies Plaintiffs' allegations with respect to the time period relevant to Plaintiffs'  
13 claims in this case.  
14

15 40. Answering Paragraph 40 of the Third Amended Complaint, Defendant avers that the  
16 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
17 Defendant denies all allegations contained in this paragraph which are incomplete and/or  
18 inconsistent with such notes.

19 41. Answering Paragraph 41 of the Third Amended Complaint, Defendant avers that the  
20 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
21 Defendant denies all allegations contained in this paragraph which are incomplete and/or  
22 inconsistent with such notes.  
23

24 42. Answering Paragraph 42 of the Third Amended Complaint, Defendant avers that the  
25 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
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1 Defendant denies all allegations contained in this paragraph which are incomplete and/or  
2 inconsistent with such notes.

3 43. Answering Paragraph 43 of the Third Amended Complaint, Defendant denies based on  
4 lack of knowledge and information.

5 44. Answering Paragraph 44 of the Third Amended Complaint, Defendant avers that the  
6 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
7 Defendant denies all allegations contained in this paragraph which are incomplete and/or  
8 inconsistent with such notes.

9 45. Answering Paragraph 45 of the Third Amended Complaint, Defendant avers that the  
10 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
11 Defendant denies all allegations contained in this paragraph which are incomplete and/or  
12 inconsistent with such notes.

13 46. Answering Paragraph 46 of the Third Amended Complaint, Defendant admits the  
14 allegations contained therein.

15 47. Answering Paragraph 47 of the Third Amended Complaint, Defendant allegations  
16 contained therein.

17 48. Answering Paragraph 48 of the Third Amended Complaint, Defendant avers that the  
18 medical notes submitted by Plaintiffs in support of their claim speak for themselves and  
19 Defendant denies all allegations contained in this paragraph which are incomplete and/or  
20 inconsistent with such notes.

21 49. Answering Paragraph 49 of the Third Amended Complaint, Defendant admits P.K.W.  
22 began attending Uinta Academy in Utah. Defendant denies the remaining allegations.  
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1 50. Answering Paragraph 50 of the Third Amended Complaint, Defendant denies the  
2 allegations contained therein.

3 51. Answering Paragraph 51 of the Third Amended Complaint, Defendant admits that  
4 Plaintiffs filed claims for P.K.W.'s stay at Uinta Academy.

5 52. Answering Paragraph 52 of the Third Amended Complaint, Defendant admits that  
6 Plaintiffs' claim for more than a yearlong stay at Uinta Academy was denied.

7 53. Answering Paragraph 53 of the Third Amended Complaint, Defendant admits that  
8 Plaintiffs timely appealed the denial of the Uinta Academy claim.

9 54. Answering Paragraph 54 of the Third Amended Complaint, Defendant admits that it  
10 denied Plaintiffs' appeal.

11 55. Answering Paragraph 55 of the Third Amended Complaint, Defendant denies based on  
12 lack of knowledge and information.

13 56. Answering Paragraph 56 of the Third Amended Complaint, Defendant denies based on  
14 lack of knowledge and information.

15 57. Answering Paragraph 57 of the Third Amended Complaint, Defendant denies based on  
16 lack of knowledge and information.

17 58. Answering Paragraph 58 of the Third Amended Complaint, Defendant denies based on  
18 lack of knowledge and information.

19 59. Answering Paragraph 59 of the Third Amended Complaint, Defendant denies the  
20 allegations thereof to the extent they relate to this answering Defendant. The remaining  
21 allegations are denied based on lack of knowledge and information.

22 60. Answering Paragraph 60 of the Third Amended Complaint, Defendant asserts that the  
23 allegations contained therein are legal conclusions to which no response is required.  
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61. Answering Paragraph 61 of the Third Amended Complaint, Defendant denies based the allegations thereof.

### **CLAIMS FOR RELIEF**

#### **FIRST CAUSE OF ACTION**

**Recovery of Benefits Due Under an ERISA Benefit Plan Enforcement and Clarification of Rights, Prejudgment and Post Judgment Interest, and Attorneys' Fees and Costs, Pursuant to ERISA Section 502(a), 29 U.S.C. Section 1132(a) (Against the Intel Corporation Anthem HDHP Plan, and Blue Cross of California dba Anthem Blue Cross**

62. Defendant incorporates its answers to Paragraphs 1 through 61 as if set forth fully herein.

63. Answering Paragraph 63 of the Third Amended Complaint, the allegations set forth therein relate to parties other than this Answering Defendant; accordingly no response is required.

64. Answering Paragraph 64 of the Third Amended Complaint, the allegations set forth therein relate to parties other than this Answering Defendant; accordingly no response is required.

65. Answering Paragraph 65 of the Third Amended Complaint, the allegations set forth therein relate to parties other than this Answering Defendant; accordingly no response is required.

66. Answering Paragraph 66 of the Third Amended Complaint, the allegations set forth therein relate to parties other than this Answering Defendant; accordingly no response is required.

1 67. Answering Paragraph 67 of the Third Amended Complaint, the allegations set forth  
 2 therein relate to parties other than this Answering Defendant; accordingly no response is  
 3 required.

4 a. Answering Paragraph 67(a) of the Third Amended Complaint, Defendant denies  
 5 based on lack of knowledge and information and denies the allegations because  
 6 they do not pertain to Defendant.

7 b. Answering Paragraph 67(b) of the Third Amended Complaint, Defendant denies  
 8 based on lack of knowledge and information and denies the allegations because  
 9 they do not pertain to Defendant.

10 c. Answering Paragraph 67(c) of the Third Amended Complaint, Defendant denies  
 11 based on lack of knowledge and information and denies the allegations because  
 12 they do not pertain to Defendant.

13 d. Answering Paragraph 67(d) of the Third Amended Complaint, Defendant denies  
 14 based on lack of knowledge and information and denies the allegations because  
 15 they do not pertain to Defendant.

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 18 **SECOND CAUSE OF ACTION**  
 19 **(Breach of Contract Against PROVIDENCE HEALTH PLAN; STATE OF OREGON**  
 20 **PUBLIC EMPLOYEES BENEFITS BOARD PLAN; and DOES 1-10)**

21 68. Defendant incorporates its answers to Paragraphs 1 through 67 as if set forth fully  
 22 herein.

23 69. Answering Paragraph 69 of the Third Amended Complaint, Defendant asserts that the  
 24 administrative services contract described by Plaintiffs speaks for itself. Defendant denies any  
 25 allegations contained in this Paragraph to the extent they are inconsistent with the contract.  
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1 70. Answering Paragraph 70 of the Third Amended Complaint, the allegations set forth are  
 2 legal conclusions and arguments to which no response is required. To the extent a response is  
 3 required, the Defendant denies the allegations contained in this Paragraph.

4 71. Answering Paragraph 71 of the Third Amended Complaint, the allegations set forth are  
 5 legal conclusions and arguments to which no response is required. To the extent a response is  
 6 required, the Defendant denies the allegations contained in this Paragraph.

7 72. Answering Paragraph 72 of the Third Amended Complaint, Defendant denies the  
 8 allegations contained therein.

9 73. Answering Paragraph 73 of the Third Amended Complaint, Defendant denies the  
 10 allegations contained therein and denies that Plaintiffs are entitled to any of the relief requested.  
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 13 **THIRD CAUSE OF ACTION**  
 14 **(Breach of the Covenant of Good Faith and Fair Dealing (Insurance Bad Faith) Against**  
 15 **Providence Health Plan, and DOES 1 through 10)**

16 74. Defendant incorporates its answers to Paragraphs 1 through 73 as if set forth fully  
 17 herein.

18 75. Answering Paragraph 75 of the Third Amended Complaint, which contains legal  
 19 arguments and conclusions, Defendant denies the allegations contained therein.

20 76. Answering Paragraph 76 of the Third Amended Complaint, Defendant denies the  
 21 allegations contained therein.

22 77. Answering Paragraph 77 of the Third Amended Complaint, Defendant denies the  
 23 allegations contained therein.

24 78. Answering Paragraph 78 of the Third Amended Complaint, Defendant denies the  
 25 allegations contained therein.  
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1 79. Answering Paragraph 79 of the Third Amended Complaint, Defendant denies the  
2 allegations contained therein.

3 80. Answering Paragraph 80 of the Third Amended Complaint, Defendant denies the  
4 allegations contained therein.

5 81. Answering Paragraph 81 of the Third Amended Complaint, Defendant denies the  
6 allegations contained therein.

7 82. Answering Paragraph 82 of the Third Amended Complaint, Defendant denies the  
8 allegations contained therein.

9 83. Answering Paragraph 83 of the Third Amended Complaint, Defendant denies the  
10 allegations contained therein.

11 84. Answering Paragraph 84 of the Third Amended Complaint, Defendant denies the  
12 allegations contained therein.

13 85. Answering Paragraph 85 of the Third Amended Complaint, Defendant denies the  
14 allegations contained therein.

15 86. Answering Paragraph 86 of the Third Amended Complaint, Defendant denies the  
16 allegations contained therein.

17 87. Answering Paragraph 87 of the Third Amended Complaint, Defendant denies the  
18 allegations contained therein.

19 88. Answering Paragraph 88 of the Third Amended Complaint, Defendant denies the  
20 allegations contained therein.

21 89. Answering Paragraph 89 of the Third Amended Complaint, Defendant denies the  
22 allegations contained therein.

1 90. Answering Paragraph 90 of the Third Amended Complaint, Defendant denies the  
2 allegations contained therein.

3 91. Answering Paragraph 91 of the Third Amended Complaint, Defendant denies the  
4 allegations contained therein.

5 92. Answering Paragraph 92 of the Third Amended Complaint, Defendant denies the  
6 allegations contained therein.

7 93. Answering Paragraph 93 of the Third Amended Complaint, Defendant denies the  
8 allegations contained therein.

9 94. Answering Paragraph 94 of the Third Amended Complaint, Defendant denies the  
10 allegations contained therein.

11 95. Answering Paragraph 95 of the Third Amended Complaint, Defendant denies the  
12 allegations contained therein and denies that Plaintiffs are entitled to any of the relief requested.

13 96. Answering Paragraph 96 of the Third Amended Complaint, Defendant denies the  
14 allegations contained therein and denies that Plaintiffs are entitled to any of the relief requested.

15 **PRAYER FOR RELIEF**

16 **AS TO THE ANTHEM PLAN (INCLUDING THE INTEL PLAN DEFENDANT) AND  
17 BLUE CROSS OF CALIFORNIA dba ANTHEM BLUE CROSS**

18 97. Answering Paragraph 97 of the Third Amended Complaint, the relief sought does not  
19 relate to this Answering Defendant, accordingly no response is required.

20 98. Answering Paragraph 98 of the Third Amended Complaint, the relief sought does not  
21 relate to this Answering Defendant, accordingly no response is required.

22 99. Answering Paragraph 99 of the Third Amended Complaint, the relief sought does not  
23 relate to this Answering Defendant, accordingly no response is required.

1 100. Answering Paragraph 100 of the Third Amended Complaint, the relief sought does not  
2 relate to this Answering Defendant, accordingly no response is required.

3 101. Answering Paragraph 101 of the Third Amended Complaint, the relief sought does not  
4 relate to this Answering Defendant, accordingly no response is required.  
5

6 **PRAYER FOR RELIEF**  
7 **AS TO PROVIDENCE HEALTH PLAN AND STATE OF OREGON PUBLIC**  
8 **EMPLOYEES BENEFIT BOARD PLAN**

9 102. Answering Paragraph 102 of the Third Amended Complaint, to the extent any response  
10 is required, Defendant denies that Plaintiffs are entitled to any of the relief requested  
11 from Defendant.

12 103. Answering Paragraph 103 of the Third Amended Complaint, to the extent any response  
13 is required, Defendant denies that Plaintiffs are entitled to any of the relief requested  
14 from Defendant.

15 104. Answering Paragraph 104 of the Third Amended Complaint, to the extent any response  
16 is required, Defendant denies that Plaintiffs are entitled to any of the relief requested  
17 from Defendant.

18 105. Answering Paragraph 105 of the Third Amended Complaint, to the extent any response  
19 is required, Defendant denies that Plaintiffs are entitled to any of the relief requested  
20 from Defendant.

21 106. Answering Paragraph 106 of the Third Amended Complaint, to the extent any response  
22 is required, Defendant denies that Plaintiffs are entitled to any of the relief requested  
23 from Defendant.  
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**AFFIRMATIVE DEFENSES AND OTHER DEFENSES**

1. Plaintiffs have failed to state a claim upon which relief against Providence can be granted.
2. Plaintiff Jennifer W. lacks standing to bring this lawsuit because she is not a participant or beneficiary under the PEBB Plan.
3. Plaintiffs' claims at issue for Uinta Academy were not Medically Necessary.
4. To the extent Plaintiffs seek to assert claims sounding in tort or tort-based damages, those claims and damages are barred by the applicable statute of limitations.
5. Plaintiffs have failed to mitigate their damages.
6. Defendant reserves the right to assert additional affirmative and other defenses during the pendency of litigation.

Dated this 19th day of December, 2022.

*s/Medora Marisseau*

Medora A. Marisseau, OSBA #923838

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*Attorney for Defendants*



**CERTIFICATE OF SERVICE**

I, Luci Brock, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Ave., Suite 3300, Seattle, WA 98101. On this day, I caused a true and correct copy of the foregoing document to be filed with the Court electronically. I caused the same to be served on the parties listed below in the manner indicated.

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 Katie Joy Spielman, *pro hac vice*  
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8 *Attorneys for Defendant Blue Cross of*  
9 *California, dba Anthem Blue Cross*

10 I declare under penalty of perjury under the laws of the State of Washington that the  
11 foregoing is true and correct, to the best of my knowledge.

12 Executed on this 19th day of December 2022, at Seattle, Washington.

13 s/Luci Brock

14 Luci Brock  
15 Litigation Legal Assistant